

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.**

**S.A. No.105(V) of 2016-17,  
S.A. No.209(V) of 2016-17 &  
S.A. No.100(ET) of 2016-17**

(Arising out of the order of the learned Addl.CST(Appeal), South Zone, Berhampur in First Appeal Nos.AA (VAT)-06/2015-16 & AA(ET)-03/2015-16, disposed of on 18.03.2016)

**Present: Shri G.C. Behera, Chairman  
Shri S.K. Rout, 2nd Judicial Member &  
Shri B. Bhoi, Accounts Member-II**

**S.A. No.105(V) of 2016-17**

State of Odisha, represented by the  
Commissioner of Sales Tax, Odisha,  
Cuttack.

..... Appellant

**-Vrs. -**

M/s. Karma Re-Rollers Pvt. Ltd.,  
At/Po- Plot No.N-3/445, IRC Village,  
Nayapalli, Bhubaneswar.

..... Respondent.

**S.A. No.209(V) of 2016-17  
S.A. No.100(ET) of 2016-17**

M/s. Karma Re-Roller Pvt. Ltd.,  
At/Po- Plot No.N-3/445, IRC Village,  
Nayapalli, Bhubaneswar.

..... Appellant.

**-Vrs. -**

State of Odisha, represented by the  
Commissioner of Sales Tax, Odisha,  
Cuttack.

..... Respondent.

For the State : : Mr. M.L. Agarwala, S.C.(C.T.)  
For the Dealer : : Mr. A.K. Mohapatra, Id. Advocate

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**Date of Hearing : 21.03.2023 \*\*\* Date of Order : 23.03.2023**  
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**O R D E R**

The State and the dealer-assessee are in appeal in S.A.No.105(V) of 2016-17 and S.A.No.209(V) of 2016-17 respectively challenging the order dated 18.03.2016 passed by the Additional

Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, Id.FAA) in Appeal Case No.AA (VAT)-06 of 2015-16 in respect of the first appeal order passed U/s. 43 of the OVAT Act. Further, the dealer-assessee is in appeal in S.A.No.100(ET) of 2016-17 against the first appeal order dated 18.03.2016 passed by the aforesaid Id.FFA in Appeal Case No.AA(ET)-03/2015-16 in respect of the first appeal order passed U/s. 10 of the OET Act. The State assails the first appeal order passed under the OVAT Act as unjust as having been unreasonably allowed ITC to the tune of ₹1,28,059.00 by the Id.FAA. The dealer-assessee in case of the appeals in respect of the first appeal orders passed under the OVAT Act and the OET Act has, inter alia, questions the maintainability of the case. Since the aforesaid three appeals relate to the same material period of the same assessee involving common question of facts and law, they are taken up together for hearing and disposal by this composite order.

2. Briefly stated the facts of the case reveal that M/s Karma Re-Rollers Private Limited, Plot No.3/445, IRC Village, Nayapalli, Bhubaneswar, TIN-21291122808 is engaged in manufacture of Ingots and Scrap of Iron & Steel at its manufacturing Unit located at Kapursingh, Pihura, Gurudijhatia, Athagarh, Cuttack. The dealer-assessee was assessed U/s. 43 of the OVAT Act by the Deputy Commissioner of Sales Tax, Bhubaneswar II Circle, Bhubaneswar (In short, learned assessing authority) for the tax period from 01.04.2012 to 31.03.2013 basing on the Tax Evasion Report (TER) submitted by the Sales Tax Officer, Vigilance, Cuttack Division, Cuttack which resulted in

demand of ₹27,58,308.00 including penalty of ₹18,38,872.00. Aggrieved, the dealer-assessee preferred first appeal. The demand of ₹27,58,308.00 so assessed at assessment passed U/s. 43 is reduced to ₹16,66,693.00. Similarly, as for the assessment passed U/s. 10 of the OET Act for the said material period, the demand raised including penalty at ₹9,31,877.00 was reduced to ₹2,18,549.00 by the Ld.FAA on disposal of the first appeal preferred by the dealer-assessee.

3. The State in its second appeal at this forum submits that despite ineligible ITC to the tune of ₹1,28,059.00 having been correctly quantified at assessment, the ld. FAA, without any reasonability, has allowed ITC. The State has thus urged upon for re-assessment of the case.

4. Mr. A.K. Mohapatra, learned Advocate representing the dealer-assessee, apart from furnishing other grounds of appeal challenges by way of submission of additional grounds of appeal to the effect that initiation of proceeding U/s.43 of the OVAT Act or U/s. 10 of the OET Act in absence of completion of assessment U/s. 39 or U/s. 9(2) of the OET Act and communication thereof to the dealer-assessee is without jurisdiction and, thus not maintainable. The learned Advocate relies on the judgment of the Hon'ble High Court of Odisha in case of **M/s. Keshab Automobiles Vs. State of Odisha, (STREV No.64 of 2016 decided on 01.12.2021)** which held that in absence of completion of assessment U/s.39, 40, 42 or 44 of the OVAT Act and communication thereof to the dealer-assessee, reassessment U/s. 43(1) of the OVAT Act is not sustainable in law.

Under the above backdrop, it is argued that in absence of any undisputed facts of completion of assessment U/s.39 of the OVAT Act or 9(2) of the OET Act and communication thereof to the dealer-assessee, the assessment order and the first appeal order passed under both the Acts are liable to be quashed.

5. Heard the contentions and submissions of both the parties in this regard. The order of assessment and the order of the ld. FAA coupled with the materials on record are gone through. It is a case of maintainability whether in absence of any communication of assessment either u/s. 39, 40, 42 or 44 of the OVAT Act to the dealer-appellant, the assessment passed U/s. 43 of the OVAT Act is sustainable. In the present case, the learned assessing authority while initiating the 43 proceeding has recorded in the order of assessment stating that the Sales Tax Officer, Bhubaneswar II Circle, Bhubaneswar has completed the self-assessment of OVAT returns for the period from 01.04.2012 to 31.03.2013 under sub-section (2) of section 39 of the OVAT Act on 30.04.2013. There is no evidence available on record as to communication of the assessment made U/s.39 of the OVAT Act to the dealer-assessee. The similar version has been made in the assessment order passed U/s. 10 of the OET Act which states that the Sales Tax Officer has completed the self-assessment of OET returns in form E-3 for the period from 01.04.2012 to 31.03.2013 under sub-section (2) of section 9 of the OET Act on dated 30.04.2013. The ld.FAA in his turn has without going into the maintainability of the case has accepted the order of assessment unilaterally relying that the dealer-assessee was

originally assessed U/s. 39 of the OVAT Act and U/s 9(2) of the OET Act.

6. The contention taken by the learned Advocate representing the dealer-assessee is substantially acceptable in view of the decision of the Hon'ble High Court of Odisha pronounced in case of **M/s. Keshab Automobiles Vs. State of Odisha** as referred as aforesaid in Para 22 of the said verdict which lays down as under.:-

“From the above discussion, the picture that emerges is that if the self-assessment under Section 39 of the OVAT Act for tax periods prior to 1<sup>st</sup> October, 2015 are not ‘accepted’ either by a formal communication or an acknowledgement by the Department, then such assessment cannot be sought to be re-opened under Section 43(1) of the OVAT Act and further subject to the fulfillment of other requirements of that provision as it stood prior to 1<sup>st</sup> October, 2015.”

7. Furthermore, as far as the re-assessment U/s.10(1) of the OET Act is concerned, it is relevant to rely on the judgment passed by the Hon'ble High Court in case of **M/s. ECMAS Resins Pvt. Ltd. and other v. State of Odisha** in **WP(C) No. 7458 of 2015** which in Para 43 of the judgment provides as under:

“43. The sum total of the above discussion is that as far as a return filed by way of self assessment under Section 9(1) read with Section 9(2) of the OET Act is concerned, unless it is ‘accepted’ by the Department by a formal communication to the dealer, it cannot be said to be an assessment that has been accepted and without such acceptance, it cannot trigger a notice for re-assessment under Section 10(1) of the OET Act read with 15B of the OET Rules. This answers the question posed to the Court.”

In view of the clear mandates given by the Hon'ble High Court as discussed supra, the forums below lack authority to assess the

dealer-assessee either U/s.43 of the OVAT Act or U/s. 9(2) of the OET Act without having jurisdiction and maintainability of the case.

8. In view of the foregoing discussions, the second appeal filed by the State under the OVAT Act is dismissed and the appeals filed by the dealer-assessee under the OVAT Act and OET Act are allowed. The impugned orders of the forums below are hereby set aside. The cross objections are disposed of accordingly.

**Dictated and corrected by me.**

**Sd/-  
(Bibekananda Bhoi)  
Accounts Member-II**

**Sd/-  
(Bibekananda Bhoi)  
Accounts Member-II**

**I agree,**

**Sd/-  
(G.C. Behera)  
Chairman**

**I agree,**

**Sd/-  
(S.K. Rout)  
2nd Judicial Member**